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Committee on Economic, Social and Cultural Rights

Provisional rules of procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted by the Committee at its forty-ninth session (12-30 November 2012)

Procedures for the consideration of individual communications received under the Optional Protocol

Transmission of communications to the Committee

Rule 1

1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, communications that are, or appear to be, submitted for consideration by the Committee under article 2 of the Optional Protocol.

2. The Secretary-General may request clarification from the author/s of a communication as to whether she, he or they wish to have the communication submitted to the Committee for consideration under the Optional Protocol. Where there is doubt as to the wish of the author/s, the Secretary-General will bring the communication to the attention of the Committee.

3. No communication shall be received by the Committee if it:

(a) Concerns a State that is not a party to the Optional Protocol;

(b) Is not in writing;

(c) Is anonymous.

Record and list of communications

Rule 2

1. The Secretary-General shall maintain a record of all communications submitted for consideration by the Committee under the Optional Protocol.

2. The Secretary-General shall prepare a list of the communications registered by the Committee, together with a brief summary of their contents. The full text of any such communication may be made available in the language of submission, to any member of the Committee upon request by that member.

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Request for clarification or additional information

Rule 3

1. The Secretary-General may request clarification or additional information from the author/s of a communication, including:

(a) The name, address, date of birth and occupation of the author/s and verification of the author's identity;

(b) The name of the State party against which the communication is directed;

(c) The objective of the communication;

(d) The facts of the claim;

(e) Steps taken by the author/s to exhaust domestic remedies;

(f) The extent to which the same matter is being or has been examined under another procedure of international investigation or settlement;

(g) The provision or provisions of the Covenant alleged to have been violated.

2. When requesting clarification or additional information, the Secretary-General shall indicate to the author/s of the communication a time limit within which such information should be submitted.

3. The Committee may approve a questionnaire to facilitate requests for clarification or additional information from the author/s of a communication.

Authors of communications

Rule 4

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author/s can justify acting on their behalf without such consent.

Non-participation of a member in the examination of a communication

Rule 5

1. A member of the Committee shall not take part in the examination of a communication if:

(a) The member has a personal interest in the case;

(b) The member has participated in the making and adoption of any decision on the case covered by the communication in any capacity other than under the procedures applicable to this Optional Protocol;

(c) The member is a national of the State party concerned.

2. In deciding any question that may arise under paragraph 1 of the present rule, the member concerned shall not take part in the decision reached.

3. If a member considers that he or she should not take part or continue to take part in the examination of a communication, the member shall inform the Committee through the Chairperson of his or her decision to withdraw.

Establishment of Working Groups and designation of Rapporteurs

Rule 6

1. In any matter related to communications under the Optional Protocol, the Committee may establish a Working Group and/or may designate a Rapporteur to make recommendations thereon to the Committee and/or to assist it in any manner in which the Committee may decide.

2. The Working Group or Rapporteur established under this rule shall be bound by the present rules and the Committee's rules of procedure, where applicable.

Interim measures

Rule 7

1. The Committee may, in exceptional circumstances, after the receipt of a communication and before a determination on the merits has been reached transmit to the State party concerned, for its urgent consideration, a request that it take such interim measures as the Committee considers necessary to avoid possible irreparable damage to the victim/s of the alleged violations.

2. When the Committee requests interim measures under this rule, the request shall state that it does not imply a determination on the admissibility or the merits of the communication.

3. The State party may present arguments at any stage of the proceedings on why the request for interim measures should be lifted or is no longer justified.

4 The Committee may withdraw a request for interim measures on the basis of submissions received from the State party and the author/s of the communication.

Order of communications

Rule 8

1. Communications shall be dealt with in the order in which they are received by the Secretary-General, unless the Committee decides otherwise.

2. The Committee may decide to consider two or more communications jointly.

3. The Committee may divide a communication and consider its parts separately, if it addresses more than one issue or it refers to persons or alleged violations not interconnected in time and place.

Method of dealing with communications

Rule 9

1. The Committee shall, by a simple majority and in accordance with the present rules, decide whether the communication is admissible or inadmissible under the Optional Protocol.

2. The decision to consider a communication admissible or inadmissible may also be taken by the Working Group established under the present rules provided that all its members so decide. The decision is subject to confirmation by the Committee plenary which may do so without formal discussion, unless a Committee member requests for such a discussion.

Procedures with regard to communications received

Rule 10

1. As soon as possible after the receipt of a communication, and provided that the individual or group of individuals consent to the disclosure of their identity to the State party concerned, the Committee, or the Committee through a Working Group or a Rapporteur, shall bring the communication confidentially to the attention of the State party and request that the State party submit a written reply.

2. Any request made in accordance with paragraph 1 of the present rule shall include a statement indicating that such a request does not imply that any decision has been reached on the question of admissibility or the merits of the communication.

3. Within six months after receipt of the Committee's request under the present rule, the State party shall submit to the Committee written explanations or statements that relate to the admissibility and the merits of the communication, as well as to any remedy that may have been provided in the matter.

4. The Committee, or the Committee through a Working Group or a Rapporteur, may request written explanations or statements that relate only to the admissibility of a communication but, in such cases, the State party may nonetheless submit written explanations or statements that relate to both the admissibility and the merits of a communication within six months of the Committee's request.

5. If the State party concerned disputes the contention of the author/s, in accordance with article 3, paragraph 1, of the Optional Protocol, that all available domestic remedies have been exhausted, the State party shall give details of the remedies available to the alleged victim or victims and said to be effective in the particular circumstances of the case.

6. The Committee, or the Committee through a Working Group or a Rapporteur, may request the State party or the author of the communication to submit, within fixed time limits, additional written explanations or statements relevant to the issues of the admissibility or merits of a communication.

7. The Committee, or the Committee through a Working Group or a Rapporteur, shall transmit to each party the submissions made by the other party pursuant to the present rule and shall afford each party an opportunity to comment on those submissions within fixed time limits.

State party's request for consideration of the admissibility separately from the merits

Rule 11

1. A State party that has received a request for a written reply in accordance with paragraph 1 of rule 10 may submit a request in writing that the communication be rejected as inadmissible, setting out the grounds for such inadmissibility, provided that such a request is submitted to the Committee within two months of the request made under paragraph 1 of rule 10.

2. The Committee, or the Committee through a Working Group or a Rapporteur, may decide to consider the admissibility separately from the merits.

3. Submission by the State party of a request in accordance with paragraph 1 of the present rule shall not extend the period of six months given to the State party to submit its written explanations or statements, unless the Committee, or the Committee through a Working Group or a Rapporteur, decides to consider the admissibility separately from the merits.

Inadmissible communications

Rule 12

1. Where the Committee decides that a communication is inadmissible, it shall communicate its decision and the reasons for it, through the Secretary-General, to the author/s of the communication and to the State party concerned.

2. A decision of the Committee declaring a communication inadmissible may be reviewed by the Committee upon receipt of a written request submitted by or on behalf of the author/s indicating that the reasons for inadmissibility no longer apply.

Communications declared admissible prior to the submission of the State party's observations on merits

Rule 13

1. Decisions declaring a communication admissible prior to the submission of the State party's observations on merits shall be transmitted, through the Secretary-General, to the author/s of the communication and to the State party concerned.

2. The Committee may revoke its decision that a communication is admissible in the light of any explanation or statements submitted by the State party and the author/s.

Examination of communications on their merits

Rule 14

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee, or the Committee through a Working Group or a Rapporteur, may consult, as appropriate, relevant documentation emanating from other United Nations bodies, specialized agencies, funds, programmes and mechanisms, and other international organizations, including from regional human rights systems that may assist in the examination of the communication, provided that the Committee shall afford each party an opportunity to comment on such third party documentation or information within fixed time limits.

2. The Committee shall formulate its Views on the communication in the light of all information made available to it in accordance with article 8, paragraph 1, of the Optional Protocol, provided that this information has been duly transmitted to the parties concerned.

3. Consideration by the Committee of information submitted by third parties, pursuant to paragraph 1 of the present rule, does not in any way imply that these third parties become a party to the proceedings.

4. The Committee may refer any communication to a Working Group to make recommendations to the Committee on the merits of the communication.

5. The Committee shall not decide on the merits of the communication without having considered the applicability of all of the admissibility grounds referred to in articles 2 and 3 of the Optional Protocol.

6. The Secretary-General shall transmit the Views of the Committee, together with any recommendations, to the author/s of the communication and to the State party concerned.

Friendly settlement

Rule 15

1. At the request of any of the parties, at any time after receipt of a communication and before a determination on the merits has been reached, the Committee shall make available its good offices to the parties with a view to reaching a friendly settlement of the matter said to amount to a violation of the Covenant and submitted for consideration under the Optional Protocol, on the basis of respect for the obligations set forth in the Covenant.

2. The friendly settlement procedure shall be conducted on the basis of consent of the parties.

3. The Committee may designate one or more of its members to facilitate negotiations between the parties.

4. The friendly settlement procedure shall be confidential and without prejudice to the parties' submissions to the Committee. No written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be used against the other party in the communication proceedings before the Committee.

5. The Committee may terminate its facilitation of the friendly settlement procedure if it concludes that the matter is not susceptible to reaching a resolution or any of the parties does not consent to its application, decides to discontinue it, or does not display the requisite will to reach a friendly settlement based on respect for the obligations set forth in the Covenant.

6. Once both parties have expressly agreed to a friendly settlement, the Committee shall adopt a decision with a statement of the facts and of the solution reached. The decision will be transmitted to the parties concerned and published in the Committee's annual report. Prior to adopting that decision, the Committee shall ascertain whether the victim/s of the alleged violation have consented to the friendly settlement agreement. In all cases, the friendly settlement must be based on respect for the obligations set forth in the Covenant.

7. If no friendly settlement is reached, the Committee shall continue the examination of the communication in accordance with the present rules.

Individual opinions

Rule 16

Any member of the Committee who has participated in the decision may request that the text of his or her individual opinion be appended to the Committee's decision or Views. The Committee may fix time limits for the submission of such individual opinions.

Discontinuance of communications

Rule 17

The Committee may discontinue consideration of a communication, when inter alia the reasons for its submission for consideration under the Optional Protocol have become moot.

Follow-up to Views of the Committee and Friendly Settlement Agreements

Rule 18

1. Within six months of the Committee's transmittal of its Views on a communication or decision that a friendly settlement has closed its consideration of a communication, the

State party concerned shall submit to the Committee a written response, which shall include information on action taken, if any, in the light of the Views and recommendations of the Committee.

2. After the six-month period referred to in paragraph 1 of the present rule, the Committee may invite the State party concerned to submit further information about any measures the State party has taken in response to its Views or recommendations or in response to a friendly settlement agreement.

3. The Committee shall, through the Secretary-General, transmit the information received from the State party to the author/s of the communication.

4. The Committee may request the State party to include information on any action taken in response to its Views, recommendations or decisions closing the consideration of a communication following a friendly settlement agreement in its subsequent reports under article 16 and 17 of the Covenant.

5. The Committee shall designate for follow-up on Views adopted under article 9 of the Optional Protocol a Rapporteur or Working Group to ascertain the measures taken by States parties to give effect to the Committee's Views, recommendations or decisions closing its consideration following a friendly settlement agreement.

6. The Rapporteur or Working Group may make such contacts and take such action as may be appropriate for the due performance of their assigned functions and shall make such recommendations for further action by the Committee as may be necessary.

7. In addition to written representations and meetings with duly accredited representatives of the State party, the Rapporteur or Working Group may seek information from the author/s and victim/s of the communications and other relevant sources.

8. The Rapporteur or Working Group shall report to the Committee on follow-up activities at each session of the Committee.

9. The Committee shall include information on follow-up activities in its annual report under article 21 of the Covenant and article 15 of the Optional Protocol.

Confidentiality of communications

Rule 19

1. Communications submitted under the Optional Protocol shall be examined by the Committee, a Working Group or Rapporteur in closed meetings.

2. All working documents prepared by the Secretary-General for the Committee, Working Group or Rapporteur shall be confidential unless the Committee decides otherwise.

3. The Secretary-General, the Committee, Working Group or Rapporteur shall not make public any communication or submissions relating to a communication prior to the date on which a decision of admissibility is issued. This is without prejudice of the Committee's prerogatives under article 8, paragraph 3, of the Optional Protocol.

4. The Committee may decide ex officio or upon request of the author/s or alleged victim/s, that the names of the author/s of a communication or the individuals who are alleged to be the victim/s of a violation of the rights set forth in the Covenant not be published in its decision of admissibility or Views or decision closing the consideration of a communication following a friendly settlement agreement.

5. The Committee, a Working Group or Rapporteur may request the author of a communication or the State party concerned to keep confidential the whole or part of any submission or information relating to the proceedings.

6. Subject to paragraphs 4 and 5 of the present rule, nothing in this rule shall affect the right of the author/s, alleged victim/s or the State party concerned to make public any submission or information bearing on the proceedings.

7. Subject to paragraphs 4 and 5 of the present rule, the Committee's final decisions on inadmissibility and Views shall be made public.

8. The Secretary-General shall be responsible for the transmittal of the Committee's final decisions to the author/s and the State party concerned.

9. Unless the Committee decides otherwise, information related to follow-up to the Committee's Views and recommendations under article 9 of the Optional Protocol and in follow-up of a friendly settlement agreement under article 7 of the Optional Protocol shall not be confidential.

10. The Committee shall include in its annual report a summary of the communications examined and, where appropriate, a summary of the explanations and statements of the States parties concerned, and of its own suggestions and recommendations.

Protection measures

Rule 20

Where the Committee receives reliable information that a State party has not complied with its obligations under article 13 of the Optional Protocol to take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation, it may seek from the State party concerned written explanations or statements clarifying the matter and describing any action it is taking to ensure that its obligations under article 13 are fulfilled. Thereafter, the Committee may request the State party to adopt and take urgently all appropriate measures to stop the breach reported.

Proceedings under the Inquiry Procedure of the Optional Protocol

Applicability

Rule 21

Rules 21 to 35 of the present rules only apply to a State party that has made the declaration under article 11, paragraph 1, of the Optional Protocol.

Transmission of information to the Committee

Rule 22

In accordance with the present rules, the Secretary-General shall bring to the attention of the Committee reliable information that is received for the Committee's consideration indicating grave or systematic violations by a State party of any of the economic, social and cultural rights set forth in the Covenant.

Record of information

Rule 23

The Secretary-General shall maintain a permanent record of information brought to the attention of the Committee in accordance with rule 22 of the present rules and shall make the information available to any member of the Committee upon request.

Summary of information

Rule 24

The Secretary-General, as appropriate, shall prepare and circulate to members of the Committee a brief summary of the information received in accordance with rule 22 of the present rules.

Confidentiality

Rule 25

1. All documents and proceedings of the Committee relating to the conduct of the inquiry shall remain confidential, without prejudice to the provisions of article 11, paragraph 7 of the Optional Protocol.

2. Meetings of the Committee during which inquiries under article 11 of the Optional Protocol are considered shall be closed.

Preliminary consideration of information by the Committee

Rule 26

1. The Committee may, through the Secretary-General, ascertain the reliability of the information and/or the sources of the information brought to its attention under article 11 of the Optional Protocol. It may seek to obtain additional relevant information substantiating the facts of the situation.

2. The Committee shall determine whether the information received contains reliable information indicating grave or systematic violations of rights set forth in the Covenant by the State party concerned.

3. The Committee may designate one or more of its members to assist it in discharging its duties under the present rule.

Examination of information

Rule 27

1. If the Committee considers that the information received and/or compiled on its own initiative is reliable and appears to indicate grave or systematic violations of rights set forth in the Covenant by the State party concerned, the Committee, through the Secretary-General, shall invite the State party to submit observations with regard to that information within fixed time limits.

2. The Committee shall take into account any observations submitted by the State party concerned, as well as any other relevant information.

3. The Committee may seek to obtain additional information, inter alia, from the following:

(a) Representatives of the State party concerned;

(b) Governmental organizations;

(c) United Nations bodies, specialized agencies, funds, programmes and mechanisms;

(d) International organizations, including from regional human rights systems;

(e) National Human Rights Institutions;

(f) Non-governmental organizations;

Establishment of an inquiry

Rule 28

1. Taking into account any observations that may have been submitted by the State party concerned, as well as other reliable information, the Committee may designate one or more of its members to conduct an inquiry and to make a report within an appropriate time limit.

2. An inquiry shall be conducted confidentially and in accordance with any modalities determined by the Committee.

3. The member or members designated by the Committee to conduct the inquiry shall determine their own methods of work, taking into account the Covenant, the Optional Protocol and the present rules.

4. During the period of the inquiry, the Committee may defer the consideration of any report that the State party concerned may have submitted pursuant to articles 16 and 17 of the Covenant.

Cooperation of the State party concerned

Rule 29

1. The Committee shall seek the cooperation of the State party concerned at all stages of an inquiry.

2. The Committee may request the State party concerned to nominate a representative to meet with the member or members designated by the Committee.

3. The Committee may request the State party concerned to provide the member or members designated by the Committee with any information that they or the State party may consider relevant to the inquiry.

Visits

Rule 30

1. Where the Committee deems it warranted, the inquiry may include a visit to the territory of the State party concerned.

2. Where the Committee decides, as a part of its inquiry, that there should be a visit to the State party concerned, it shall, through the Secretary-General, request the consent of the State party to such a visit.

3. The Committee shall inform the State party concerned of its wishes regarding the timing of the visit and the facilities required to allow the member or members designated by the Committee to conduct the inquiry to carry out their task.

Hearings

Rule 31

1. Visits may include hearings to enable the designated member or members of the Committee to determine facts or issues relevant to the inquiry.

2. The conditions and guarantees concerning any hearings held in accordance with paragraph 1 of the present rule shall be established by the designated member or members of the Committee visiting the State party in connection with an inquiry.

3. Any person appearing before the designated member or members of the Committee for the purpose of giving testimony shall make a solemn declaration as to the veracity of her or his testimony and the confidentiality of the procedure.

4. The Committee shall request that the State party take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to reprisals as a consequence of providing information or participating in any hearings or meetings in connection with an inquiry.

Assistance during an inquiry

Rule 32

1. In addition to the staff and facilities that shall be provided by the Secretary-General in connection with an inquiry, including during a visit to the State party concerned, the designated member or members of the Committee may, through the Secretary-General, invite interpreters and/or such persons with special competence in the fields covered by the Covenant, as are deemed necessary by the Committee to provide assistance at all stages of the inquiry.

2. Where such interpreters or other persons of special competence are not bound by the oath of allegiance to the United Nations, they shall be required to declare solemnly that they will perform their duties honestly, faithfully and impartially, and that they will respect the confidentiality of the proceedings.

Transmission of findings, comments or suggestions

Rule 33

1. After examining the findings of the designated member or members submitted in accordance with rule 28 of the present rules, the Committee shall transmit the findings, through the Secretary-General, to the State party concerned, together with any comments and recommendations.

2. Such transmission of findings, comments and recommendations is without prejudice to article 11, paragraph 7, of the Optional Protocol.

3. The State party concerned shall submit its observations on the findings, comments and recommendations to the Committee, through the Secretary-General, within six months of their receipt.

Follow-up action by the State party

Rule 34

1. The Committee may, after the end of the period of six months referred to in paragraph 2 of rule 33 above, invite the State party concerned, to provide it with additional information on measures taken in response to an inquiry.

2. The Committee may request a State party that has been the subject of an inquiry to include, in its report under article 16 and 17 of the Covenant, details of any measures taken in response to the Committee's findings, comments and recommendations.

Protection measures

Rule 35

Where the Committee receives reliable information that a State party has not complied with its obligations under article 13 of the Optional Protocol to take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation, it may seek from the State party concerned written explanations or statements clarifying the matter and describing any action it is taking to ensure that its obligations under article 13 are fulfilled. Thereafter, the Committee may request the State party to adopt and take urgently all appropriate measures to stop the breach reported.

Proceedings under the Inter-State Communications Procedure of the Optional Protocol

Declarations by States parties

Rule 36

1. Rules 36 to 46 of the present rules only apply to a State party that has made a declaration under article 10, paragraph 1, of the Optional Protocol.

2. The withdrawal of a declaration made under article 10 of the Optional Protocol shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under that article; no further communication by any State party shall be received under that article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party has made a new declaration.

Notification by the States parties concerned

Rule 37

1. A communication under article 10 of the Optional Protocol may be referred to the Committee by either State party concerned by notice given in accordance with paragraph 1 (b) of that article.

2. The notice referred to in paragraph 1 of this rule shall contain or be accompanied by information regarding:

(a) Steps taken to seek adjustment of the matter in accordance with article 10, paragraphs 1 (a) and (b), of the Optional Protocol, including the text of the initial communication and of any subsequent written explanations or statements by the States parties concerned which are pertinent to the matter;

(b) Steps taken to exhaust domestic remedies;

(c) Any other procedure of international investigation or settlement resorted to by the States parties concerned.

Record of communications

Rule 38

The Secretary-General shall maintain a record of all communications received by the Committee pursuant to article 10 of the Optional Protocol.

Information to the members of the Committee

Rule 39

The Secretary-General shall inform the members of the Committee without delay of any notice given under rule 37 of these rules and shall transmit to them as soon as possible copies of the notice and relevant information.

Meetings

Rule 40

The Committee shall examine communications under article 10 of the Optional Protocol in closed meetings.

Issue of communiqués concerning closed meetings

Rule 41

The Committee may, after consultation with the States parties concerned, issue communiqués, through the Secretary-General, for the use of the media and the general public regarding the activities of the Committee under article 10 of the Optional Protocol.

Requirements for the consideration of communications

Rule 42

A communication shall not be considered by the Committee unless:

(a) Both States parties concerned have made declarations under article 10, paragraph 1, of the Optional Protocol;

(b) The time limit prescribed in 10, paragraph 1, of the Optional Protocol has expired;

(c) The Committee has ascertained that all available and effective domestic remedies have been invoked and exhausted in the matter, or that the application of such remedies has been unreasonably prolonged.

Good offices

Rule 43

1. Subject to the provisions of rule 42 of these rules, the Committee shall proceed to make its good offices available to the States parties concerned with a view to reaching a

friendly solution of the matter on the basis of respect for the obligations provided for in the Covenant.

2. For the purpose indicated in paragraph 1 of this rule, the Committee may, as appropriate, establish an ad hoc conciliation commission.

Request for information

Rule 44

The Committee may, through the Secretary-General, request the States parties concerned or either of them to submit additional information or observations orally or in writing. The Committee shall set a time limit for the submission of such written information or observations.

Attendance by the States parties concerned

Rule 45

1. The States parties concerned shall be entitled to representation when the matter is considered by the Committee and to make submissions orally and/or in writing.

2. The Committee shall, through the Secretary-General, notify the States parties concerned as early as possible of the opening date, duration and place of the session at which the matter will be examined.

3. The procedure for making oral and/or written submissions shall be decided by the Committee, after consultation with the States parties concerned.

Report of the Committee

Rule 46

1. The Committee shall adopt a report in accordance with article 10, paragraph 1 (h), of the Optional Protocol with due expediency after the date of receipt of a notice under article 10, paragraph 1 b) of the Optional Protocol.

2. The provisions of paragraph 1 of rule 45 of these rules shall not apply to the deliberations of the Committee concerning the adoption of the report.

3. The Committee's report shall be communicated, through the Secretary-General, to the States parties concerned.

Communiqués on the Committee's activities under the Optional Protocol

Rule 47

The Committee may issue press communiqués on its activities under the Optional Protocol for the use of the media and the general public.